

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1820 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

JUNAADH NAGAR PALIKA

Versus

B K SINHA

Appearance:

MR ARUN H MEHTA for Petitioners
MR GHARANIYA, AGP for Respondent No. 1
MR ND NANAVATI for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/10/1999

ORAL JUDGEMENT

#. The petitioners have approached this Court challenging the order of respondent No.1-Collector of Junagadh district passed in exercise of powers under Section 258 of the Gujarat Municipalities Act, 1963, in Case No.12 of 1987.

#. The facts leading to the controversy are that the

petitioner-Municipality had planned to construct a swimming pool in the town of Junagadh and in that regard, a resolution was passed on 31st March, 1986, whereafter, tenders were invited and, accordingly, several persons filed their tenders. The details are as under :-

Name of tenderer	Amount quoted.
1. M/s Nanji Gopal	Rs. 10,57,163.10
2. Babulal B. Butani	Rs. 11,40,849.71
3. Ranchod Bhovan	Rs. 11,41,269.12
4. Harilal Hirabhai	Rs. 11,66,134.00
5. Ebha Chana	Rs. 12,47,668.00
6. Chandan Construction Co.	Rs. 14,46,285.00

The Municipality, after considering the merits of each of the tenderers, ultimately, decided to accept the tender of Babulal B. Butani, who was not the lowest tenderer. This decision of the Municipality was interfered with by the learned Collector and order Annexure-H dated 14th April, 1987 came to be passed. This petition is preferred by the Municipality mainly on the ground that the interference by the Collector was uncalled for. The decision was taken by the Municipality in public interest. There were no mala fides in the action and that it is not necessary that lowest tender should always be accepted. The reputation of the tenderer, quality of the work, etc. are relevant factors and keeping these factors in mind, the decision was taken. It is also contended that an inquiry was made with the Public Works Department of the State Government regarding the reputation and experience in respect of tenderers and the opinion of the Department was not in favour of the lowest tenderer, namely, M/s. Nanji Gopal and, therefore, the tender of Babulal B. Butani, which was second lowest, was accepted. The petitioners, therefore, have prayed for quashing and setting aside the order of the 1st respondent, produced on record at Annexure-H.

#. Heard Mr. A.H. Mehta, learned counsel for the petitioners, Mr. Gharaniya, learned Assistant Government Pleader for respondent No.1 and Mr. Buch for respondent No.2.

#. It is contended by Mr. Mehta that the order by the Collector was unwarranted. The decision was taken by the petitioner-Municipality after considering merits and demerits of each of the tenderers. It was based on an opinion of an independent Government body. The action was not mala fide. Under the circumstances, this order

was uncalled for. He also submitted that the construction of swimming pool is complete and it is in public use for nearly 11 years and, therefore, the order of the Collector has become infructuous and implementation thereof would not be possible.

#. The learned advocates for the other side have opposed this petition. However, they concede to the factual aspect of the swimming pool being in existence at Junagadh.

#. Mr. Buch contended that alternative remedy was available to the petitioners by way of approaching the appellate authority of the Government.

#. Considering the order impugned in this petition, the authority was impressed by the fact that the lowest tender was not accepted. It was also observed that there were certain erasures and overwriting in the tender of Mr. Butani, whose tender was accepted and, therefore, suspicion was hatched on the question as to who made these changes and, ultimately, the tender came to be cancelled. However, by virtue of interim relief granted by this Court, by order dated 4.9.1999, the order impugned came to be stayed and the work of construction of the pool came to be completed.

#. Before considering the question whether any interference in such matters would be called for or not, decision of the Apex Court in the case of Raunaq International Ltd. v. I.V.R. Construction Ltd., AIR 1999 SC 393, relied on by learned counsel Mr. Mehta, requires consideration. It is observed in paragraph 16 that price offered is not the sole criterion, but other relevant factors are past record of the tenderer, quality of the goods and services which are offered, his reputation, etc.

#. It is also worthwhile considering the provisions of Section 258 of the Gujarat Municipalities Act, powers under which are exercised by the Collector by passing impugned order. Section 258 reads as under :-

"258. Powers of Collector to suspend execution of orders, etc. of Municipalities:- (1) If, in the opinion of the Collector, the execution of any order or resolution of a municipality, or the doing of anything which is about to be done or is being done by or on behalf of a municipality, is causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace

or is unlawful, he may by order in writing under his signature suspend the execution or prohibit the doing thereof and where the execution of any work in pursuance of the order or resolution of the municipality is already commenced or completed direct the municipality to restore the position in which it was before the commencement of the work.

(2) When the Collector makes any order under this section he shall forthwith forward to the municipality affected thereby a copy of the order with a statement of the reasons for making it and also submit a report to State Government along with copies of such order and statement.

(3) Against the order made by the Collector under sub-section (1) the municipality may prefer an appeal to the State Government within thirty days from the date on which it receives a copy of the order. The State Government may on such appeal being preferred rescind the order or may revise or modify or confirm the order direct that the order shall continue to be in force, with or without modification, permanently or for such period as it may specify:

Provided that the order shall not be revised, modified or confirmed by the State Government without giving the municipality reasonable opportunity of showing cause against the order."

A plain reading and analysis of the section indicates that the power can be exercised in following eventualities :-

The action of the Municipality -

- (a) is causing injury or annoyance to public or
- (b) is likely to cause injury or annoyance to public,
or
- (c) is likely to lead to breach of peace, or
- (d) is unlawful.

On going through the impugned order, the authority has not come to conclusion that the action falls under (a), (b) or (c). It is also not held to be unlawful

categorically. The resolution of grant of tender is 'cancelled' on ground of it not being lowest and being suspicion because of erasers in the tender. In view of above legal proposition, lowest tender is only one of the criterion. The Collector, therefore, could not have 'cancelled' the tender.

##. The matter before this Court is at a stage when the construction is over and the disputed tender has already been given effect to. Therefore, it would be in the larger interest to quash and set aside the order impugned in this petition for the reason that barring a suspicion on basis of some alterations and erasers in the tender, there are no mala fides alleged or found. On the contrary, the decision has been taken by the petitioner on basis of an opinion expressed by a Government Department, namely, Public Works Department.

##. As regards availability of alternative remedy, it may be observed that, existence of alternative remedy does not take away the powers of the Court under Article 226. But it is a self imposed restriction expected to be exercised by the Court. It is well settled that once the petition is admitted, it should not be rejected on the ground that alternative remedy is available to the petitioner (see *Hirday Narain v. Income Tax Officer, Bareilly*, A.I.R. 1971 SC 33, paragraph 12). In the instant case, the contract work is over. The Swimming Pool is opened to public use for many years. Probably the transactions are also over. In this view of the matter, refusing to exercise power under Article 226 of the Constitution and relegating the petitioner to alternative remedy would not serve any purpose and result into futility. And this Court is, therefore, not inclined to accept the argument advanced on behalf of respondent No.2. The impugned order, therefore, needs to be quashed and set aside by this Court by allowing this petition.

#. In the result, the petition is allowed and the order impugned in this petition is hereby quashed and set aside. Rule is made absolute accordingly. No order as to costs.

[A.L. DAVE, J]

gt